Senate Joint Resolution 367

Board of Forestry

A Continuing Study on the Provision of Incentives to Preserve Forest Land in the Commonwealth of Virginia

DRAFT

September 8, 2005

Preface

During the 2005 General Assembly, Senator Patricia Ticer, Fairfax, Virginia, introduced Senate Joint Resolution 367 (SJR 367) calling for a legislative study on … "incentives to private landowners to hold and preserve their forestland" and to study the impacts, financial and otherwise, of local ordinances on the ability of private, non-industrial landowners to manage their forestland. The Virginia Board of Forestry (BOF) is charged with this study responsibility. SJR 367 is a continuation of SJR 75 passed during the 2004 General Assembly.

The Virginia Board of Forestry is composed of private citizens, forest consultants, and forest industry. This group is appointed by the Governor, but is advisory to the State Forester. Their main purpose is to offer guidance on pertinent issues relating to the Mission and Vision of the Department of Forestry as well as other forest resource related issues. The BOF role with regard to this Legislative Study was to: 1) review laws and programs of other states, localities, and agencies, 2) seek comments and recommendations from citizens, conservation groups, farm and forest associations, and forest industry. Virginia Department of Forestry staff assisted the Board of Forestry with this study.

BROAD STUDY FINDINGS…

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Executive Summary

During the 2004 General Assembly, Senator Patricia Ticer, Fairfax, Virginia, introduced Senate Joint Resolution 75 (SJR 75) calling for a legislative study on… "incentives to private landowners to hold and preserve their forest land" and charged the Virginia Board of Forestry (BOF) with this study responsibility. As a part of SJR 75, the Board of Forestry is directed to …. "seek comments and recommendations from citizens across Virginia". One of the recommendations of SJR 75 was to continue the study, hence SJR 367 was passed during the 2005 General Assembly session. In addition, this study called for examining the impacts of local ordinances on the ability of non-industrial private landowners to manage their forest lands.

This study continuation, called SJR 367, went in-depth on the issues identified in the previous SJR 75 work. Furthermore, the other promising state forestland conservation programs were investigated thoroughly and conclusions were drawn on their applicability to Virginia. On the local impacts portion of the SJR 367, county administrators and other planning staff were interviewed to ascertain why these ordinances were necessary or deemed important by the locality. Appendix 1 gives the complete past SJR 75 report.

RECOMMENDATIONS FROM THE BODY OF THE REPORT:

Recommendation 1: Institute non-perpetual Land Protection Agreements as a method to conserve forest land. This new program would be called The Virginia Rural Landscapes Protection Program.

Recommendation 2: Establish separate "farm and forestry" categories within the VLCF funding scheme and ensure independent equitable funding amounts.

Recommendation 3: Support the continuing strong role of the Virginia Conservation Tax Credit in increasing Virginia conservation efforts.

Recommendation 4: Amend the Right to Practice Forestry Act (10.1-1126.1).

Recommendation 5: Adopt a statewide Use-Value Taxation Rate for Agriculture and Forestry Lands with a payback program for lost county revenue. It is recommended that the General Assembly allocate $50,000 for this statewide land use study. Participation in this one year study should include the Secretariats of Agriculture and Forestry and Natural Resources along with the Virginia Association of Counties and Virginia Municipal League.

Background and Recommendations

The long-term sustainability of our woodlands and working landscapes depend heavily on the working relationships between private non-industrial landowners, public officials, and the forestry community. Forest loss in Virginia is over 20,000 acres per year resulting in decreased landowner economic viability and returns on investment and reduced environmental benefits for the Commonwealth's citizens.

During the 2004 General Assembly, Senator Patricia Ticer, Fairfax, Virginia, introduced Senate Joint Resolution 75 (SJR 75) calling for a legislative study on … "incentives to private landowners to hold and preserve their forestland" and charged the Virginia Board of Forestry (BOF) with this study responsibility. As a part of SJR 75, the Board of Forestry is directed to … "seek comments and recommendations from citizens across Virginia". SJR 367 is the continuation of the initial work and contains additional work related to examining the impact of local ordinances on the ability of private, non-industrial landowners to manage their forestland.

Recommendation 1: Institute non-perpetual Land Protection Agreements as a method to conserve forest land. This new program would be called The Virginia Rural Landscapes Protection Program.

Many Virginia private farm and forest landowners have conserved their lands in perpetuity through the use of conservation easements. Virginia has been and is a national leader in securing perpetual easements. For many other landowners, perpetual easements are not possible yet have the desire to conserve their land for future generations. Consequently, a new concept called a land protection agreement could allow for long-term protection but not necessarily perpetual. The proposal is as follows:

This voluntary, long-term forestland protection program rewards landowners who agree to protect their forestland from development and fragmentation; sustainably manage their forestland to improve its overall health, productivity and quality; protect stream water quality; and conserve the valued natural and ecological resources within it that provide essential benefits such as clean air, clean water and improved wildlife habitat.

The purpose of this initiative is to financially compensate landowners for forestland and open space values that they are currently providing to society for free. The premise is that tools like conservation easements, purchased development rights, land-use taxation, etc. are not accomplishing the degree of conserving the forestland base that we would like them to. These are effective conservation strategies and are important tools, but we need more. This idea is very simple in that it puts a periodic annual payment into the hands of a landowner to encourage them to maintain their current landuse. In effect, society is financially compensating them for the myriad of societal values they provide.

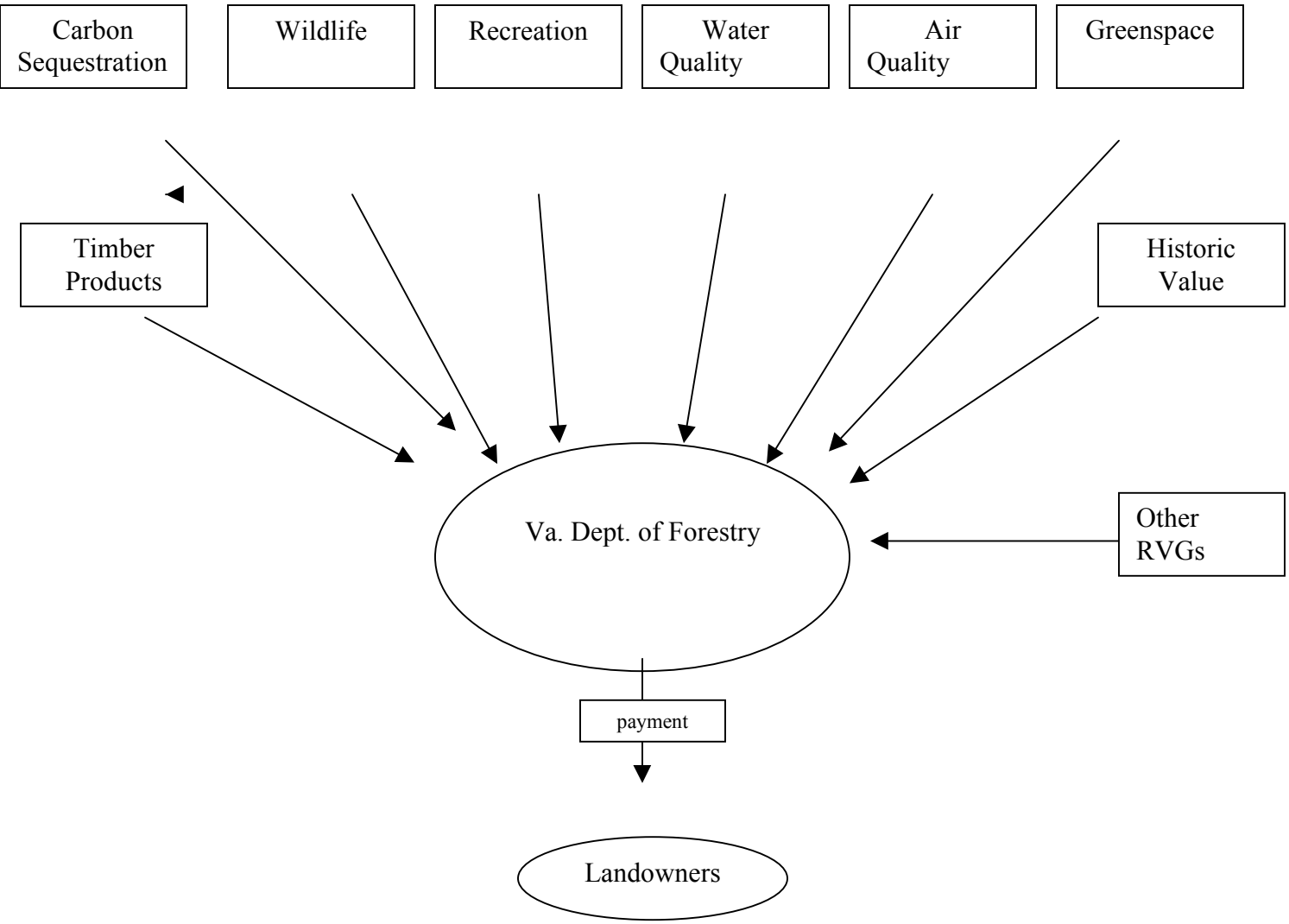
An important step would be to identify the many groups that we could partner with. They could be special interest groups, government agencies (federal, state, local), conservation organizations, etc. ***This concept could include a Resource Value Group (RVG) to reflect the***

interests of agriculture and open land. This would bring another group of partners to the table (agricultural community) and help this idea appeal to a broader audience. This would likely result in additional revenues being brought in to the payment trust fund.

Partnerships would be developed through the various RVG's. Each RVG would be comprised of different entities. An initial challenge/opportunity would be to identify these partners and determine their level of program interest and financial commitment.

This concept emphasizes "strength in numbers", bringing all parties to the table that are sometimes perceived as being at opposing ends of the land conservation spectrum. For example, groups like Virginia Forest Watch and Forest Industry may differ over how we use and manage the forest…but both groups share the vision that open space/forests should be conserved. This concept allows the Virginia Department of Forestry to serve as a bridge to bring partners together.

FOREST RESOURCE VALUE GROUPS



An important point to consider with this program is that it is **not a total** government subsidy. Program funding is primarily generated from the financial contributions of society's RVG's. This makes it a very positive program in that government simply becomes a facilitator to put these societal values in the hands of landowners. Admittedly, there are good possibilities that some of the partners in the RVG's may be agencies in federal, state, and local governments. For example, a partner in the "Carbon Sequestration RVG" could very well be the U.S. Department of Energy. The point to stress is trying to secure funding from many sources outside of government. This idea stresses the free market concept in that society will be placing its value on the many natural resource values that landowners currently provide for free. ***In affect, the landowner is simply bidding the periodic annual payment value against the value to develop the land.***

A payment matrix could be developed where the various RVG's financial contribution to a given property would be determined. For example, a property in a critical watershed that is a municipal supply watershed or a property with numerous water resources would rate higher in contributions from the Water Quality RVG than a property with minimal water resources. The sum total of the various RVG's financial contribution to a given property would then determine the periodic annual payment offered to the landowner. This would be a very good application of a GIS….each layer corresponding to a RVG. A GIS may solve the calculating of the periodic annual payment better than a simple payment matrix.

Identifying important properties is already part of the Department of Forestry's strategic plan. For a property to even be considered in this program, certain criteria would need to be established. For example, there would need to be a minimum acreage threshold. Also, the periodic annual payment would need to be based on total acreage in a given landowner ownership. Could this periodic annual payment be used to entice a landowner to enter into a conservation easement? If so, the payment matrix might value that property higher. This concept could also encourage afforestation, if we choose to weigh forested acreage higher than open fields. The landowner may opt to afforest to capture a higher periodic annual payment.

The RVG partners become the stakeholders and the properties receiving financial compensation through the program are their dividends. Some type of trust fund would need to be set up for RVG partners to pay into. The funding level in this trust fund will determine the acreage The Virginia Department of Forestry is able to bring into the program. For the water quality RVG, the Virginia Water Quality Improvement Fund (WQIF) could serve as a core funding amount supplemented by private funding sources.

Recommendation 2: Establish separate "farm and forestry" categories within the Virginia Land Conservation Foundation funding scheme and ensure independent equitable funding amounts.

Chapters 900 and 906 of the Virginia Acts of the Assembly established the Virginia Land Conservation Foundation, Fund, and Board of Trustees. These acts and recent amendments are codified at Sections 10.1-1017 through 10.1-1026 of the Code of Virginia. The Virginia Land Conservation Foundation is Virginia's funding mechanism for preserving our disappearing landscape. The Foundation was created in 1999 by the Virginia General Assembly.

The farm and forestry category comprises one of four primary funding categories within the Virginia Land Conservation Foundation framework. The other three categories are: 1) Natural Area Protection, 2) Open Space and Parks, and 3) Historic Area Preservation. All categories are critical to preserving what is important to the Commonwealth's citizens, however, over half of the applications from the most recent funding period (November 2004) was in the farm and forest category. Only one true forested tract recommended by the Department, while serving on the Virginia Land Conservation Foundation staff team, made it to the final funding list. The Department does recognize that there is overlap in these four categories, i.e., most agricultural tracts have some forest land also, it is not meeting the intent of the Virginia Land Conservation Foundation to not consider more fully the most dominant land use in the Commonwealth.

Recommendation 3: Support the continuing strong role of the Virginia Conservation Tax Credit in increasing Virginia conservation efforts.

Ten states offer conservation tax credits (CA, CO, CN, DE, MD, MS, NM. NC, SC, VA). Virginia and Colorado have been widely touted as the most successful at utilizing tax credits to conserve land. In Virginia, it is widely accepted that this credit has spiked an increase in conservation easements. Briefly, the Virginia Land Conservation Incentives Act of 1999 gives donors of conservation land and easements a credit against state income taxes of one-half the value they give away. This tax credit can now be sold for cash. Unused credits may be carried forward and used in five more tax years after the year of the original donation. This credit is particularly helpful to low income landowners who do not pay enough tax to utilize the credit and to generally encourage more land conservation. Please find below three areas of benefit regarding this law:

Benefits to the landowner:

- Rewards private landowners who voluntarily protect important lands in Virginia (such as those necessary to meet Virginia's commitment under the Chesapeake 2000 Agreement).
- Helps landowners keep their family land by providing a financially attractive alternative to selling the land for development.
- Can reduce or eliminate state income tax liability by making a conservation gift.
- Enables landowners to obtain a more attractive financial return from a gift.
- Benefits landowners in all income categories, not just the wealthy.

Benefits to conservation:

- Establishes a market-based incentive to encourage conservation donations.
- Makes conservation of lands owned by "land-rich/cash-poor" landowners financially feasible.
- Makes conservation of lands in the most threatened parts of the state, where rapid development is causing land values to rise, financially feasible.

Benefits to Taxpayers/Commonwealth**.** Conservation easements and land donations protect many resources of value to the citizens of the Commonwealth, both now and for future generations. Among the resources protected by conservation easements are:

- Watershed protection for crucial drinking water supplies.
- Protection of the Chesapeake Bay and helping meet the Chesapeake 2000 commitment.
- Prime agricultural soil protection, often helping to preserve a critical mass of farmland for continued farming.
- Historic and cultural resource protection, especially the landscape context of such resources.
- Civil War battlefield preservation.
- Scenic viewshed protection, including the edges of parks, scenic roads and rivers, and highway corridors.
- Open space and recreational land preservation.
- Wildlife habitat and wildlife corridor protection, including threatened or endangered species.
- Forest protection, including sustainable forestry harvesting and for old growth forest protection.
- Benefiting the Commonwealth's world-renowned tourism appeal, by permanently protecting the precious resources outlined above.

In this past year, there has been Virginia legislative scrutiny of the Tax Credit Program. Apparently, there have been rumors of program abuse in the areas of aggressive appraisals, conservation purpose served, and tax auditing of approved projects. The abuses are few but have caused some concern over program integrity with Legislative members who have discussed limiting (capping) the amount of tax credit, thereby reducing its overall conservation effectiveness.

In May 2004, members of the Virginia Conservation Community requested a ruling on two of the major issues surrounding the Virginia Conservation Tax Credit. The first was whether the Virginia Department of Taxation would accept a Virginia tax credit if the application did not meet the IRS 170(H) provision pertinent to land conservation efforts nationwide. The second issue is whether Virginia corporations can utilize these same credits and subsequently sell or transfer these credits. The tax commissioners ruling are shown in Appendix 4 in their entirety.

While program modifications may be appropriate, the conceptual framework represented by the Conservation Tax Credit is valid and is serving Virginia citizens and land conservation well.

Recommendation 4: Amend the Right to Practice Forestry Act (10.1-1126.1)

Virginia, as well as many other states, faces local legal conflicts regarding timber harvesting and other agribusiness matters. In an effort to reduce the number of these conflicts and protect landowners from unnecessary restrictive ordinances, "The Right to Practice Forestry Law" was passed during the 1997 Virginia General Assembly session and is codified in Section 10.1-1126.1. The legislation is shown fully in Appendix 5.

In addition, the law was meant to give landowners flexibility to utilize their property in profit-making ways while meeting environmental regulations and voluntary practices. There has been an ever-increasing attempt on localities part to control land use activities which has led to a mixture of local ordinances that differ from locality to locality. This regulatory hodge-podge has left many landowners surprised and confused on the local level requirements. Landowners need regulatory certainty to invest in forest conservation.

One such challenge to the "Right To Practice Forestry Law" was the Ann F. Dail, et. al. v. York County, et. al. (Record No. 991591). Briefly, this case was heard in Spring, 2000 when Ms. Dail argued that the York County ordinance which asked her to leave a highway buffer as well as possess a forest management plan prior to harvesting preempted "The Right To Practice Forestry Law" and she should not have to follow the county ordinance. The local Circuit Court dismissed the case ruling that the ordinances were not preemptive. The case went to the Virginia Supreme Court which also allowed the ordinances to remain, hence, requiring a buffer on her property with the buffer area not available for harvesting.

Section 10.1-1126.1.B. begins…Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

Recommendation 5: Adopt a statewide Use-Value Taxation Rate for Agriculture and Forestry Lands with a payback program for lost county revenue. It is recommended that the General Assembly allocate $50,000 for this statewide land use study. Participation in this one year study should include the Secretariats of Agriculture and Forestry and Natural Resources along with the Virginia Association of Counties and Virginia Municipal League.

Use-value taxation has been a Virginia local option since the 1970's. Many counties have adopted different tax rates for agricultural, forest, or open land. These reduced tax rates are based locally on soil productivity and other natural and economic factors. However, each county is independent of every other county with their assessed rates. If one considers forestland preservation to be an important statewide issue, then the combination of different rates coupled with counties without use-value taxation makes consistent local preservation efforts unpredictable and difficult to implement. Currently, counties have the option to adopt land use taxation rates.

There appears to be 3 definitive reasons that the local option for land use value taxation is not more widespread. First, awareness and education that this option exists is present. Turnover in county staffing is a factor. Second, the issue of lost revenue when a county reduces the tax rate and how does the county make up that difference. Agricultural-forestal districts are a special part of this reduced taxation scenario but only to certain geographical areas of the locality. Lastly, the notion with this type of tax situation that a landowner is only deferring development to a later date and, in the meantime, the county is subsidizing this activity.

A uniform statewide use-value taxation can offer landowners reduced land tax rates, predictable management alternatives and a stable ownership future. Program flexibility can still rest with the locality; however, the option to not have a use-value taxation program would not be present. Other program parameters such as tax rate structure options and landowner applicability would still need to be determined.

MORTIMER REPORT (INCLUDING ECONOMIC IMPACT CASE STUDIES)

COUNTY ADMINISTRATORS INTERVIEW

Appendices

APPENDIX 1

SENATE JOINT RESOLUTION NO. 367

Requesting the Board of Forestry to continue its study of providing incentives to private landowners to hold and preserve their forestland.

Agreed to by the Senate, February 2, 2005
Agreed to by the House of Delegates, February 24, 2005

WHEREAS, Senate Joint Resolution No. 75 (2004) requested the Board of Forestry to study the provision of incentives to private landowners to hold and preserve their forestland; and

WHEREAS, the Board held eight public meetings in 2004 to seek comments and recommendations from citizens, conservation groups, farm and forest landowners, association representatives, and forest industry association representatives concerning the various mechanisms that would provide incentives to private landowners to maintain and preserve their forestland; and

WHEREAS, the Board reviewed the laws and programs of other states, localities, and agencies that provide such incentives; and

WHEREAS, the Board conducted a focus group composed of representatives of localities, conservation groups, associations, and the forest industry to review draft recommendations; and

WHEREAS, the Board submitted an executive summary and report of its findings and recommendations to the Governor and General Assembly on December 29, 2004; and

WHEREAS, the Board's report recommends that the study be continued to consider developing a voluntary, statewide forest protection program and to examine the impact, financial or otherwise, of local ordinances on the ability of nonindustrial, private landowners to manage their forestlands; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Board of Forestry be requested to continue its study of providing incentives to private landowners to hold and preserve their forestland.

In conducting its study, the Board shall examine (i) the relative merits of developing a voluntary, statewide forest protection program and (ii) the impact, financial or otherwise, of local ordinances on the ability of nonindustrial, private landowners to manage their forestlands.

Technical assistance shall be provided to the Board by the Department of Forestry. All agencies of the Commonwealth shall provide assistance to the Board for this study, upon request.

The Board shall complete its meetings by November 30, 2005, and shall submit to the Governor and General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for

the processing of legislative documents and reports no later than the first day of the 2006 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

SENATE JOINT RESOLUTION NO. 75

Requesting the Virginia Board of Forestry to study the provision of incentives to private landowners to hold and preserve their forestland.

Agreed to by the Senate, February 17, 2004
Agreed to by the House of Delegates, March 9, 2004

WHEREAS, Virginia's forestland covers two-thirds of the Commonwealth's land cover and is one of our most valuable natural resources; and

WHEREAS, the 15 million acres of forestland protect our watersheds, provide food and cover for wildlife, help purify air, provide products for Virginians' daily needs, and afford recreational opportunities for its citizens; and

WHEREAS, almost 80 percent of Virginia's forestland is owned by private individuals and small corporations that invest their resources in providing stewardship of these lands; and

WHEREAS, Virginia's population continues to increase, with development extending further into rural areas, resulting in the loss of forestland as it is converted to other uses; and

WHEREAS, restrictive regulations, escalating real estate taxes, increasing zoning and local ordinances act as disincentives for retaining forestland and open space; and

WHEREAS, Virginia's continued loss of forestland will have an undesirable effect on our environment and economic well-being; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Board of Forestry be requested to study the provision of incentives to private landowners to hold and preserve their forestland.

In conducting its study, the Virginia Board of Forestry shall (i) review laws and programs of other states, localities, and agencies and (ii) seek comments and recommendations from citizens, conservation groups, farm and forest landowner association representatives and forest industry association representatives for the purpose of recommending mechanisms that will provide incentives to private landowners to maintain and preserve their forestland for the environmental and economic benefit of the Commonwealth.

Technical assistance shall be provided to the Virginia Board of Forestry by the staff of the Virginia Department of Forestry. All agencies of the Commonwealth shall provide assistance to the Virginia Board of Forestry for this study, upon request.

The Virginia Board of Forestry shall complete its meetings by November 30, 2004, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems.

APPENDIX 2

The following information details the research aspects of SJR 75 and clarifying research during SJR 367. After an initial literature review, several progressive states were examined with respect to land conservation, taxation, and forest management programs. Comparisons to Virginia were considered and discussion included where appropriate.

Introduction[1]

There are a number of federal and state government programs that provide money or technical assistance to forestland owners to improve forest management or conserve or preserve forestland.

Many of these programs are direct incentives for good forest management. They help property owners improve the quality of the forests by providing up-front capital for investments in the property and by increasing rates of return at harvest. They also directly help to educate and assist property owners in exercising good forest management.

Improvements in the efficiency of the programs might include lowering cost-share rates, particularly in times of increasing stumpage prices. Another would be to in some way identify landowners without harvest revenues available to establish plantations, as opposed to those who likely would have planted without cost share assistance[2].

For the remainder of this discussion, the research will focus on programs that, if implemented, could possibly act as incentives for Virginia forestland owners to practice long-term, sustainable, and responsible forestry.

State: Minnesota

Program: Sustainable Forest Incentive Act

Benefit to Landowners[3]: The Sustainable Forest Incentive Act, passed in 2001, allows annual payments to be made to enrolled owners of forested land as an incentive to practice long-term sustainable forest management.

Requirements: In order to qualify for the SFIA program, applicants must own 20 or more contiguous acres, of which 50 percent is forested. No delinquent tax is allowed and no other federal cost-share participation is permitted. The program is open to both residents and nonresidents of Minnesota but there can only be one claimant per parcel of land. The land must also have an active forest management plan in place (including goals for the property, legal description, forest cover type inventory, map of boundaries, etc.) which was prepared by an approved plan writer within the past ten years. All applicants agree to be enrolled in the program for a minimum of *eight* years and agree not to develop the land.

Administration: Each year, Minnesota determines a statewide payment-per-acre rate using three formulas based on the average property tax for timberland. The formula that provides the largest payment-per-acre will be used. The minimum amount per acre is $1.50. The amount

[1] Tax and Related Incentives for Forest Management. Research Report 307. Legislative Research Commission. Frankfort, Kentucky. January 2003.
[2] ibid
[3] http://www.taxes.state.mn.us. Keyword: Sustainable Forest Incentive Act

each participant will receive is determined by multiplying the payment-per-acre by the number of enrolled acres. This program is self-certifying.

Withdrawal Penalty: You may choose to cancel enrollment from the program after four years by filing a written request with the department. Once filed, the cancellation will take effect four years from the date of your written request. You will continue to receive incentive payments during the four-year waiting period. Once you withdraw, the land cannot be reenrolled in the program for at least three years. A penalty will be assessed if you do not complete eight years of enrollment. The penalty is equal to the total payments you received for the past four years, plus interest. If the land changes hands, the new buyer can opt to not be enrolled in the program.

State 2: Washington

Program: Forestry Riparian Easement Program

Benefit to Landowners: The only program of its kind in the country, Washington's Forestry Riparian Easement Program partially compensates eligible small forest landowners in exchange for a 50-year easement on "qualifying timber". This is the timber the landowner is required to leave unharvested as a result of new forest practices rules protecting Washington's forests and fish. Unlike a typical easement involving property or a road, a forestry riparian easement covers only that timber leased to the state by a small forest landowner.

Requirements: Eligible landowners must own 20 or more contiguous acres of forestland or 80 acres total, part of which must be next to a river, stream, lake, pond or wetland that the landowner plans to harvest in the near future. Historically, the landowner must not have harvested more than 2 million board feet of timber each year from all ownerships. Most importantly, the landowner must be willing to enter into a fifty year agreement with the state of Washington. Furthermore, the state must have access to the property by foot or by vehicle on occasion to visit the site. Trees covered by the easement may not be cut or removed for 50 years.

Administration: In setting up the easement, the landowner must initially cover all costs associated with setting up and recording the easement. These costs may include hiring a consulting forester to measure and mark the easement boundaries, developing a stewardship plan, filing fees, and mortgage company fees. However, once the landowner has formally enrolled in the easement program, all of these compliance costs will be reimbursed. After being approved for the program and setting up the easement, landowners will receive a minimum of *50 percent of the fair market stumpage value* for the qualifying timber. The landowner can choose to have the value of his or her timber assessed either on the date the application is submitted or the date when harvesting begins.

Withdrawal Penalty: It is not possible to withdraw from the easement program once an easement has been established. Easements will remain in effect for 50 years from the date the easement is signed.

Assessment: The Forest Riparian Easement Program is a unique program designed to act as a compromise between the need to protect state water resources and the right for landowner(s) to

harvest timber. At the eight public meetings across Virginia, many forestland owners complained about the financial burden resulting from the inability to harvest timber near water sources. Washington's Forest Riparian Easement Program addresses this issue by "leasing" the rights to harvest timber in riparian areas from landowners for a period of 50 years. Landowners are partially compensated and the state of Washington utilizes a relatively cheap and simple method of ensuring water quality for its citizenry. When compared against the costs of constructing new water treatment facilities, the Forest Riparian Easement Program is a cost effective way of safeguarding Washington's water resources into the future while also providing much needed financial assistance to small landowners.

State 3: Oregon

Program: Forest Resource Trust

Benefit to Landowner: The Forest Resource Trust is the only program of its kind in the United States. Enacted in 1993, the Forest Resource Trust provides financial, technical and related assistance to nonindustrial private forestland owners to establish forest stands and improve management of forestlands for timber production, wildlife, water quality and other environmental purposes. In contrast to true cost share programs, the trust is a venture capital program where the State and the landowner share the risks and benefits of reforesting "underproducing" lands that at one time were forested. The state provides up to 100% of the initial costs of reforestation (up to a maximum of $100,000 over a two year period). In exchange, the landowner agrees to reimburse the state when timber from the assisted acreage is harvested. There is no requirement, however, for the landowner to harvest timber at any time.

Requirements: Eligible landowners must own at least 10 contiguous acres of forestland and no more than 5,000 acres. The forestland must be "underproducing" as specified in the standards set forth by the Oregon Department of Natural Resources.

Administration: Reimbursement is based on a pre-determined percentage of after tax harvest revenues ranging from 10-25%. The formula includes factors such as reforestation costs, future timber prices, a set rate of return, and inherent worth of the site. The land becomes free and clear of the trust contract when the expected volume stated in the contract is harvested from the forest stand and the payback percentage is paid, or after 200 years.

Source of Funding: Lottery Revenues and PacifiCorp contributions

Withdrawal Penalty: A buyout option is included in the contract whereby owners may terminate the contract at any time during the first twenty five years by repaying all trust funds with 6.8% interest. Payments from the revenue sharing and buyout options are reinvested into the trust to reforest even more underproducing forestland

Assessment: Landowner response was low in the years immediately following the program's inception and has subsequently grown slowly over the last decade. The Forest Resource Trust is a noble and original effort to provide landowners with assistance to reforest "underproducing" lands, but there have been many objections to the program. The complexity of the contractual

agreement has been cited by many landowners as a reason for not enrolling in the program. Furthermore, the requirement that a lien on the property be retained by the State has acted as a disincentive for landowners to enroll in the program.

State 4: Wisconsin

Program: Wisconsin Forest Landowner Grant Program

Benefit to Landowners: The Wisconsin Forest Landowner Grant Program is a state-funded program that provides forestland owners with up to 65% cost sharing assistance for the following forest related activities: management plan preparation, tree planting (both hardwoods and softwoods), timber stand improvement, soil and water protection, fencing, various wildlife practices, buffer establishment, and threatened and endangered species protection.

Requirements: Eligible landowners must have at least 10 contiguous acres and not more than 500 acres of non industrial private forestland. In order to qualify for the program, the applicant must have an existing forest stewardship plan or create one for the property upon application.

Administration: The minimum grant is $100 per year for each landowner; the maximum amount of cost share assistance a landowner can receive is $10,000. Program administrators create a list of high priority activities that receive 80% of the available funding. The remaining 20% is assigned to the low priority activities. Landowners cannot begin a practice before they receive written approval from the Department of Natural Resources lest they become ineligible for reimbursement.

Source of Funding: The program is funded with an annual $1,000,000 dollars appropriation from the state legislature

Assessment: The Wisconsin Forest Landowner Grant Program is a flexible cost share apparatus that allows for landowners to be reimbursed for a wide variety of activities on their forestland. As new threats to Wisconsin's forests arrive each year, the program adjusts its list of high priority activities to provide more funding to address these challenges. Since its inception in 1998, the program has provided more than four million dollars in reimbursement to over 4,000 landowners.

State 5: California

Program: California Forest Improvement Plan

Benefit to Landowners: The California Forest Improvement Program (CFIP) is a forestry incentive program that provides up to 75% cost share assistance to landowners for management plans, riparian forest supervision, site preparation, tree planting, thinning, pruning, follow-up, release, land conservation, and improvement of fish and wildlife habitat. CFIP's purpose is to encourage private and public investments in forestlands and resources within the state to ensure adequate future high quality timber supplies, related employment and other economic benefits,

and to protect, maintain, and enhance the forest resource for the benefit of present and future generations.

Requirements: To be eligible for the program, landowners must own between 20 and 5,000 acres of forestland in California. Landowners that own less than 20 acres may qualify if they submit a joint application with neighboring landowners and the combined acreage is a minimum of 20 contiguous acres of forestland. The land must be able to support 10 percent or more tree cover with trees native to California, including native oaks and must also be zoned to allow forest resource management.

Administration: If the application is approved, the landowner will be provided with a formal contract called California Forest Improvement Program Agreement. By signing the contract, landowners agree to perform the project as proposed in return for financial assistance. Replanting forestland that has burned and conservation projects generally are the first to be funded, but most eligible projects can be funded given adequate lead-time.

Source of Funding: Timber harvest receipts from state lands.

State 6: Iowa

Program: The Iowa Resource Enhancement and Protection Program

Benefit to Landowners: In order to increase the economic viability of private woodlands, the REAP program reimburses landowners for 75% of their expenses. Eligible activities include site preparation for natural regeneration and tree planting, timber stand improvement, fencing, and establishment of restoration of windbreaks.

Requirements: For reimbursement of tree planting activities, a minimum of three forested acres is required. For timber stand improvements activities, a minimum of five acres is required.

Administration: The REAP program offers a maximum payment of $365 an acre for approved activities. Since the program was created in 1989, however, funding has decreased steadily due to budgetary problems.

PROPERTY TAXATION

Introduction[4]

[4] Tax and Related Incentives for Forest Management. Research Report 307. Legislative Research Commission. Frankfort, Kentucky. January 2003.

Forestland owners routinely list property taxes as their biggest complaint. The tax operates as a kind of carrying cost, a yearly cost incurred simply to own the property. Because forest property can be productive without generating income for many years, there is often no income to offset this cost. In years when this happens, forestland owners effectively own and operate their land at a net financial loss. At the eight public meetings held across Virginia pertaining to this study, the most often raised issue was the financial burden of property taxes and the inequality in property tax rates throughout the Commonwealth.

Because property taxes are not imposed directly on management activity, they may at first appear not to be related to forest management. However, many researchers suggest that the tax can be a disincentive for good forest management in several ways.

Impact on Forest Management[5]

Researchers claim that property taxes can create disincentives for good forest management in three ways. First, to avoid operating at a net loss, property owners may sell or convert the land to other, more productive and often more developed uses. Second, the tax may consume funds that would otherwise be invested in the property. Third, property owners may keep the land but cut and sell timber prematurely to pay the tax.

The effect of property taxes on land-use decisions, however, is more disputed. Louis Borie, in an article titled "Use Value Assessment: Tax Break or Management Incentive," reports that the evidence is mixed, and that while lower taxes might provide an additional incentive not to develop forestland, such decisions are based on a variety of financial and other factors. Likewise, the University of Idaho study suggests that development decisions may depend more on location, reasons for owning the property, development pressures, and other pressures not including tax rates. Nonetheless, Virginia forestland owners have unanimously expressed their desire for the Commonwealth to adopt a more equitable and standardized property tax statute as an incentive for long-term forestland management and ownership.

Taxation Methods

In order to lessen the impact of property taxes on forest management, it is possible to change the method of calculating the tax to factor in more accurately the timing of the timber cycle and the income-producing potential of the property. There are several methods of taxing forest property. Aside from the resulting tax level, the timing and manner of each method can affect forest management decisions.

State Taw Laws

Ad valorem property tax (Current Use) - A tax, duty, or fee which varies based on the value of the products, services, or property on which it is levied.

Flat property tax - under this system the same amount of money per acre is collected on any acre of timberland regardless of its value.

[5] ibid

Yield Tax - is a tax on the value of the harvested timber. The tax is collected after the timber is harvested.

Severance Tax - is a flat tax on a specific unit of volume harvested (i.e., board feet, cubic feet, cords, tonnage etc.). The tax is collected after the timber is harvested.

State	Ad Valorem	Flat	Exemption	Severance Tax	Yield Tax
Alabama	X			X	
Alaska			X		
Arizona		X		X	
Arkansas	X			X	
California	X			X	
Colorado	X				
Connecticut	X[1]				
Delaware	X		X		
Florida	X				
Georgia	X			X	
Hawaii	X[2]				
Idaho	X				X
Illinois	X				X
Indiana	X	X			
Iowa	X		X		
Kansas	X[2]				
Kentucky	X				
Louisiana	X				
Maine	X[1]				
Maryland	X				
Massachusetts		X[4]			X
Michigan		X			X
Minnesota		X[3]			
Mississippi	X				
Missouri		X			X
Montana	X			X	
Nebraska	X				
Nevada	X				
New Hampshire		X			X
New Jersey	X				
New Mexico	X				X
New York	X	X[3]			X
N. Carolina	X			X	
N. Dakota		X			
Ohio	X	X[3]			
Oklahoma	X[2]				
Oregon	X[1]				
Pennsylvania	X[1]				

Rhode Island	**X**		**X**			
S. Carolina	**X**					
S. Dakota	**X**[2]					
Tennessee	**X**					
Texas	**X**					
Utah	**X**					
Vermont	**X**					
Virginia	**X**[5]			**X**		
Washington	**X**[1]					
W. Virginia	**X**				**X**	
Wisconsin		**X**			**X**	
Wyoming	**X**					

X[1]Current use based on forest productivity

X[2]Current use based on agricultural productivity

X[3]Reduction in Fair Market Value (FMV)

X[4] Reduction in FMV for land classified as forestland or recreational lands; Flat tax for land classified as agricultural & horticultural land.

X[5]Current use based on site productivity

Additional Detail on the most popular Taxing Systems

Ad Valorem[6]**:** The ad valorem valuation method is based on the fair market or highest and best use value of the property. This type of property taxation includes the value of the standing timber on the property, although some states have referred to their method as ad valorem without including the timber in the property assessment. Currently, around ten states use this tax rate. Among the most common complaints against the ad valorem tax is that the land and timber are taxed year after year, resulting in multiple taxing of each year's timber growth. Another complaint is that the tax is levied against unrealized income. This forces the landowner to bear all the risk of growing the timber while still providing revenue to the taxing jurisdiction. This is most likely an undesirable alternative for Virginia forestland owners.

Current Use Taxation[7]**:** Also known as "productivity" taxation, these programs use valuation methods other than fair market value. Virginia, along with 30 other states, currently uses current use taxation valuation methods. This tax is based on the current use of the property, not the highest and best, and is often coupled with a severance or yield tax upon timber harvest. (Virginia has a severance tax on timber that has been used to fund the Reforestation of Timberlands program). Using this method, timber volume (by species or productivity class) is multiplied by stumpage price to arrive at a value for the property based on the forest's potential to produce revenue. A current use valuation program usually employs one of two broad valuation mechanisms. Either the tax is based directly on the annual growth of the forest, or the

[6] Hibbard et al. "Property Tax Programs Focused on Forest Resources: A Review and Analysis". Staff Paper Series 150. University of Minnesota College of Natural Resources. January 2001.
[7] ibid

tax is based on the gross or net mean annual income of the parcel as a function of annual growth. According to some researchers, this taxation method is the best for forest management. One problem often raised with this method is that because the tax remains constant and based on soil productivity values, different stocking values would elicit the same amount of tax.

Flat Property Tax: Several states use this method to tax all forestland at a flat rate per acre. This tax has little effect on timber rotation and is easy to administer (requiring no calculations or evaluations). It provides a stable source of revenue and it is easy for the public to understand. However, one problem with using a flat property tax rate is that it places a heavier burden on less productive land.

Exemption: In many states, exempting forestland from property taxation is used as an alternative to the above methods of valuation. Alaska, Delaware, Iowa, and New York all have complete or partial exemptions. This method is rarely adopted and carries with it problems relating to revenue generation for the state.

Case Example Review of State Programs

The states below were selected using the following criteria: (1) each state represents different types of tax structures with unique design elements, (2) each program has been proclaimed as at lease partially successful in achieving policy objectives, and (3) each represents different areas of the country.

State 1: California[8]

Program: Enforceably Restricted Land Program and the Open-Space Program

California real property is assessed at its full cash value; however, three special taxation programs may be applied to specified forested lands; the Enforceably Restricted Land Program, which establishes Timberland Production Zones (TPZs); the Agricultural Preserve or Open-Space Program; and the Timber Yield Tax. The first two programs are exclusive of each other, while the third applies to all forest lands. Note that the program involving TPZ is a zoning program whereas the Open-Space Program is a more traditional current use program.

Requirements: Timberland Production Zone land, designated by the county board, must be devoted to timber production and be capable of growing 15 cubic feet of wood fiber per acre per year. The zoning designation requires a management plan and adherence to the state forest practice rules. To be considered for the Open Space program, forestland must be in an agricultural preserve with its use restricted for a minimum of ten years. State forest practice rules are mandatory, but there is no requirement for a management plan.

Valuation Technique: The methodology for TPZ land valuation is mandated by statute and the values are assigned for three regions, each containing five site classes. The statute concerning

[8] Kilgore et al. "Property Taxation of Private Forests in the United States: A National Review". Journal of Forestry. April/May 2003.

land values is updated based on changes in five-year average stumpage values. Open space forestland is valued using an income capitalization method or current use formula similar to Virginia's. All forestland is currently subject to a 2.9 percent yield tax in California. The yield tax does not apply if the harvesting is for personal use or the value of the harvesting in any fiscal quarter is less than $3000.

Withdrawal Penalties: The TPZ program is a ten-year rolling program. The owner may request rezoning, which results in no penalty; however it requires county board approval and a ten-year period before the use of the land can change. If the landowner requests immediate rezoning with land use change, upon approval, the landowner must pay a tax recoupment fee that is in excess of the difference in annual taxes. There is no penalty for nonrenewal of the Open-Space program ten-year contract; however, if the landowner cancels the contract there is a cancellation fee of 12.5 percent of the fair market value of the parcel, and a tax recoupment fee similar to the TPZ fee.

Assessment: According to the Northern Forest Land Council's Forest Taxation Project, state officials claim administration of the program is efficient. The TPZ program improves long-term economic viability of forest management, but may well transfer or increase development pressures onto non-TPZ land. Romm et al. (1987) observed that a high percentage of nonindustrial private forest lands had been excluded from the TPZ's, lessening the incentives on these lands for forestry investment.

State 2: Georgia[9]

Program: Along with Alabama and Oregon, Georgia has the most total acreage of forestland in the country. Georgia classifies land into ten categories. Forestland in Georgia is generally classified in three ways: agricultural property, conservation use property, or environmentally sensitive property. Forestland may be valued for taxation purposes in a few different ways. If it qualifies as conservation use property or environmentally sensitive property, forestland may qualify for the preferential assessment program or it may qualify for current use valuation.

Requirements: All three programs or classifications have a maximum acreage limit of 2,000 acres. Unlike most other states, this limit applies to the owner not the parcel, meaning the owner cannot enroll more than total of two thousand acres of land into the program. All three programs also require the applicant to be a natural or naturalized citizen. Environmentally sensitive land must be certified by the Georgia Department of Natural Resources before classification. To qualify as conservation use land, the land must be used primarily in the production of timber, yet the law allows up to 50 percent of the land to lie dormant at any one time.

Valuation Mechanism: Property under the preferential assessment program is valued at 75 percent of its fair market value. This is instead of the standard valuation at 100 percent of fair market value. Conservation use and environmentally sensitive lands use a "current use" valuation in determining an assessment. This valuation is a combination of an ad valorem

[9] ibid

valuation and an income capitalization valuation. Sixty five percent of the value is based on a five-year weighted average of per acre income from both hardwood and softwood in the state. Thirty-five percent of the valuation is based on market studies of sales data of comparable lands. These values are determined annually at the state level of nine productivity classes in nine regions. Standing timber is exempt from property taxes, but is assessed at 100 percent of its fair market value at the time of harvest or sale.

Withdrawal Penalties: The conservation use and environmentally sensitive property upon approval of application is entered into a ten-year agreement. If the land use changes or other requirements of eligibility are violated, the county will levy a penalty consisting of rollback taxes, interest, and depending on time of the withdrawal, additional penalties. This penalty applies to the total parcel, even if the violation only involved a portion of the parcel.

State 3: Minnesota[10]

Program: Minnesota employs a combination of taxes that apply to forest lands: an ad valorem tax, a productivity tax, and a flat tax with a yield tax. Minnesota has a unique property tax system that is meant to hedge against the general regressive nature of a property tax. First, Minnesota has a multi-tiered property tax rate structure, meaning different land types or land uses are taxed at different rates and certain amounts of value are also taxed at different rates. For instance, the first 75,000 of market value of a residential homestead is taxed at 1.0 percent, whereas the market value that exceeds $75,000 is taxed at 1.7 percent. This, at least in theory, is to correct for the regressive nature of the property tax, as the property tax is not well based on the taxpayer's ability to pay. Second, the tax is complemented by a progressive property tax refund system. Within this system, the refund amount to the taxpayer is equal to the amount that their property tax exceeds a certain percentage of the landowners' or renters' income.

Valuation Mechanism

Ad Valorem**.** The most common and well-known property tax type in Minnesota is the ad valorem tax. Different rates, established by state statute, are applied to different classes of property. The 2b classification is that for timberland; however timberland may be classified as 2a if it is part of a farm. Currently, more than 1.8 million acres of property are enrolled in the 2b classification. The law, which governs the classification system, states that real estate in class 2b, must be used exclusively for the growing of trees. Though this definition seems fairly clear-cut, it was found that there is much room left for interpretation by assessors as to how land is classified. The class rate for 2b land is 1.2%. This rate, which is determined by state statute, is then multiplied by the market value of the land. The market value of each parcel is determined by the county assessor annually, basing the valuation of the parcel on recent sales of similar property. Once the class rate is multiplied by the market value, this product is multiplied by the local tax rate. The local tax rate is the sum of all tax rates from the districts that contain the specific parcel. This is determined by the county auditor who divides the dollar amount of the levy by the total taxable valuation. The ad valorem tax formulation is as follows: Estimated Market Value x Class Rate x Local Tax Rate= Tax Payable.

[10] ibid

Minnesota Tree Growth Tax. The Minnesota tree growth tax, similar to the auxiliary forest tax, is in lieu of ad valorem property tax. This tax is based on the value of the annual timber growth on a parcel of land. Individual counties may choose to adopt this program, although some are currently closed to new enrollments. The program requires that a parcel be a minimum of five acres and that the landowner must submit an application to the county board including the following items:

- A legal description of the property
- A map of the forest types present on the parcel
- A statement of intention to reforest temporarily nonproductive land
- A signed and sworn statement that the land will be used exclusively for growing continuous forest crops in accordance with sustained yield practices and will be open to the public for fishing and hunting

After the parcel meets the above requirements, it is classified into one of three categories provided in the law: a commercial forest type, a temporary nonproductive forest type, or as permanently nonproductive land.

The commercial forest type category is defined as able to produce at least three cords of pulpwood or sawlogs per acre or that the parcel contains 500 stems per acre. Tax for this classification is calculated at 30 percent of the value of the estimated average annual tree growth for each forest type contained on the specific parcel. The growth rate for each forest type is determined by the local county board every ten years and is based on Minnesota Department of Natural Resources and US Forest Service survey data. The stumpage value is calculated biennially, in the even years. This value is based on timber sales receipts on state land in the specific county over the previous two years. The formulation is as follows: Growth Rate (cords/acre) x Stumpage Value/Cord x 0.30= Tax Payable.

The temporarily nonproductive forest type is defined as capable of producing, but does not presently contain sufficient volume to be classified as a commercial forest type. The land is taxed at a flat rate of $0.05 per acre per year. The tax is levied with the stipulation that the owner must agree to reforest within ten years. If the owner fails to reforest within the ten-year period, the owner is then levied a tax of $0.15 per acre per year. This classification also provides for a tax credit of $0.50 for each acre planted and maintained with a minimum of five hundred threes. This credit may be taken annually for up to ten years. Many counties require landowners to sign an agreement relinquishing their right to this credit (Baughman 2000).

The Permanently Nonproductive Land is defined as unsuitable for growing commercial forest types. The tax for this classification is $0.05 per acre per year.

Withdrawal Penalties. Should a landowner decide to withdraw from the tree growth tax program a penalty of the difference in taxes between the ad valorem system and the tree growth program is assessed for up to ten previous years of enrollment. In comparing the ad valorem system and the tree growth tax program, for payable 1998 figures, the state average

tax for the 2b timberland classification was **$2.18 per acre**. It is important to note that these are averages.

Assessment. There are a number of problems with the forest taxation programs in Minnesota. The counties may choose to adopt the Tree Growth Tax Law, and given the chance, only ten counties have chosen to do so. This is already a significant problem for forestland owners in Virginia. Complicating matters, these counties have all added additional requirements or closed the program to new entrants. This results in a lack of equity in the taxation of forestland on a statewide basis. Another problem is that the Tree Growth Tax Law, which is supposed to provide a tax reduction to qualifying forest property owners, in some cases actually results in higher taxes than the normal ad valorem classification would. This is due to the steep increases in stumpage prices over the last ten years.

State 4: New Hampshire

Like Virginia, New Hampshire uses a current use valuation method to assess property taxes on forestland.

Requirements. In order to have land considered under the Current Use Law for reduced valuation, the parcel under consideration must be greater then ten acres, able to produce an annual gross income of at least $2500, or be designated as a Certified Tree Farm. These requirements are very inclusive and, if implemented in Virginia, would address the problem of inequity in the Commonwealth's current statute that leaves it up the county to adopt current use taxation. In New Hampshire, a management plan is not required but is often used as documentation of "responsible land stewardship". This additional classification of practicing responsible land stewardship reduces the "current use" value by about 50 percent. New Hampshire also allows a 20 percent reduction in land valuation if the landowner allows year-round nonmotorized public access.

Administration. The landowner applies to the local assessor for current use assessment. The Current Use Board, a statewide entity, annually establishes a schedule of taxable current use values. The Department of Revenue Administration administers and enforces all other aspects of the program.

Valuation Mechanism. The land is valued according to a schedule of taxable values set by the Current Use Board. These values are based on an income capitalization method for timber production. These values are broken down into four cover type classifications. Each classification is given two values, on reflecting the added costs of "responsible land stewardship". The value may then be further reduced if the landowners allow public access. The value is then subject to the local property tax rate. This law is accompanied by a yield tax of 10 percent of the stumpage value.

Penalties. If the owner is changing the land use to a nonqualifying one, the penalty due is 10 percent of the fair market value of the parcel.

Assessment. An assessment of certain program elements was documented in interviews conducted by the Northern Forest Lands Council (1994) forest taxation project. Most persons interviewed found the program ineffective as a deterrent to land conversion, and a problem in that there is no direct reimbursement mechanism from the state to county governments. However, New Hampshire is an example of state statute that sets very minimum requirements for its forestland owners to qualify for current use taxation.

State 5: Wisconsin[11]

Program: The Managed Forest Land tax program is different from others discussed in that it establishes a tax burden rather than setting taxable values. It is a flat tax with a small penalty for closing private forestland to public access. In addition, there is also a yield tax of 5 percent of the stumpage value.

Requirements: The minimum parcel acreage allowed is ten acres with 80 percent of that land required to be suitable for timber production. The program requires a management plan and public access, of which 80 acres may be exempted from the public access requirement by the landowner for an additional cost. The landowner must enter into a 25- or 50-year contract.

Valuation Mechanism: The land is taxed at one rate set by state statute. The current rate is $0.74 per acre per year. An extra $1.00 per acre per year is paid for land closed to public access.

Withdrawal Penalties: The penalty for withdrawal is the greater of: (1) the difference in what taxes would be owed according to the ad valorem system and taxes actually paid while enrolled in the managed forestland program multiplied by the number of years since entry into the program, or (2) 5 percent of the stumpage value. Fifty percent of any penalty paid is disbursed to the Wisconsin Department of Natural Resources and 50 percent is given to the county containing the parcel.

Assessment: The Managed Forest Land tax gives landowners substantial tax savings and promotes the management of forested lands. However, the yield tax has become an administrative nightmare, costing the state two and half times what it brings in. Studies by Barrows and Rosner and Stier (1992) found the most frequent reason for not enrolling in the program was the public access requirement, but this was amended to allow 80 acres for exemption of public access. Another reason given for a lack of enrollment was concern about the penalty, which can exceed the actual land value. This is seen as a strong disincentive to participation.

State 6: Indiana

Program: Classified Forest Program

[11] ibid.

Requirements: A minimum of 10 contiguous forested acres is required to enroll in the program. In order to qualify for the program, the forestland must support a growth of native or planted trees which have been set aside for the production of timber and wildlife, the protection of watersheds, or the control of erosion. Land enrolled in the program cannot be cleared, developed, or used in any fashion that disturbs the natural wildlife or productivity of the forestland. Land enrolled in the Classified Forest program must follow minimum standards of good timber management. The landowner must also follow a written forest management plan that is approved by the district forester. This plan should describe the forest in its present condition, provide goals that will match the objectives of the owner, and must also be revised at times as the land develops and the landowners' goals change.

Valuation Mechanism: Enrolled forestland owners pay $1.00 per acre in property taxes on enrolled forestland. This helps alleviate the property tax burden on forestland, freeing up funds for landowners to reinvest in their property or use as extra income. As another benefit to landowners, regular forest inspections are provided by a professional forester in order to maximize land productivity and health.

Withdrawal Penalties: In order to withdraw land from the program, the landowner must contact a county real estate assessor in order to determine the amount of property taxes that would have been paid had the property not been enrolled in the program. The difference between the two property tax rates must be paid by the landowner up to but no more than ten years with an additional 10% on top in interest.

Assessment: The Indiana Classified Forest program is among the nation's most thriving and longest running forest stewardship programs in the United States. The qualifications for enrolling in the program are not strict and the requirements allow for both small and large forestland owners to enjoy the tax break. Regardless of what county a citizen of Indiana owns forestland in, every qualifying landowner pays a standard, reasonable, and flat property tax rate that rewards the landowner for good stewardship. It is important to note, however, that Indiana is only 22% forested, compared with over 60% in Virginia. The requirements and restrictions of the Classified Forest Program are relatively lax and the property tax rate is so low because the cost of the program itself is much smaller than it would be in state like Virginia.

State 7: Michigan

Program: Commercial Forest Program

Requirements: A minimum of 40 contiguous forested acres (land managed for Christmas trees not eligible). Land must be devoted to commercial forest management. The landowner must also have a forest management plan written by a registered forester or forestry professional. Land enrolled in the Commercial Forest Program cannot be used for agriculture, mineral extraction, grazing, industry, developed recreation, residences, resorts, commercial purposes, or development purposes. Lands listed in this program *must be open to the public for hunting and fishing*. These lands are private lands under the control of

private owners, who through the Commercial Forest Program allow the public the privilege of hunting and fishing. The right for the public to hunt and fish on these land does NOT include the right to camp, destroy brush, construct blinds, or use ATV's or other all terrain vehicles where prohibited

Valuation Mechanism: Enrolled forestland owners pay $1.10 per acre annually in general property taxes. This flat rate is a significant reduction from the property tax rate calculated under the normal ad valorem evaluation. Additionally, the State of Michigan pays $1.20 per acre annually to each county where land is listed in the program.

Withdrawal Penalty: Landowners wishing to withdraw from the CF program can do so by submitting an application to Michigan's Department of Natural Resources. A withdrawal penalty will be assessed using *ad valorem* information provided by the county or local governments.

Assessment: The mission of the CF program is to reward private forestland owners for providing the residents of Michigan with aesthetic beauty, clean air, clean water, and a variety of other public benefits that come from healthy forestland. Landowners enrolled in the CF program enjoy a significantly lower property tax rate on qualifying land than land assessed using the normal *ad valorem* method. In return, however, enrolled landowners must provide a very tangible and concrete service for the public: recreational access to their private forestland. The citizens of Michigan subsidize this tax break for private landowners and, in return, gain access to privately owned pristine wilderness. This unusual *quid pro quo* makes it easier to sell the public, yet it is understandably the most frequent objection to the program. While the stipulations of the CF program call for the public to hunt and fish *responsibly* on private lands, this certainly does not always happen. While the majority of hunters and fishers act as proper stewards of Michigan's environmental heritage, there will always be the occasional outdoorsmen who litters, destroys trees and other plant life, and generally disrespects private property. Nonetheless, unusually high property tax rates in Michigan make this program an attractive incentive for landowners.

Appendix 3

During the 2005 General Assembly session, the Code of Virginia was amended to add the *Chesapeake Bay Watershed Nutrient Credit Exchange Program* (62.1-44.19:12 through 19:19). Point sources of nitrogen and phosphorus (sewage treatment facilities) contribute significant pollutant amounts to the waters of the Commonwealth. The establishment and maintenance of forest land related to nutrient uptake and storage can be significant. A brief review of this legislation follows:

The 2000 Chesapeake Bay Agreement and related multi-state cooperative and regulatory initiatives (i) establish allocations for nitrogen and phosphorus delivered to the Chesapeake Bay and its tidal tributaries to meet applicable water quality standards and (ii) place caps on the loads of these nutrients that may be discharged into the Chesapeake Bay watershed. These initiatives will require public and private point source dischargers of nitrogen and phosphorus to achieve significant additional reductions of these nutrients to meet the cap load allocations.

The General Assembly finds and determines that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist in (a) meeting these cap load allocations cost-effectively and as soon as possible in keeping with the 2010 timeline and objectives of the Chesapeake 2000 Agreement, (b) accommodating continued growth and economic development in the Chesapeake Bay watershed, and (c) providing a foundation for establishing market-based incentives to help achieve the Chesapeake Bay Program's nonpoint source reduction goals.

Until such time as the Nutrient Credit Board finds that no allocations are reasonably available in an individual tributary, the general permit shall provide for the acquisition of allocations through payments into the Virginia Water Quality Improvement Fund established in § 10.1-2128. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the Virginia tributaries strategies plans.

The general permit shall base the cost of each pound of allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

The permittees under the general permit may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, to be known as the Virginia Nutrient Credit Exchange Association, to coordinate and facilitate participation in the nutrient credit exchange program by its members. The Virginia Nutrient Credit Exchange Association, which is hereafter referred to as the Association, may (i) submit on behalf of the permittees the compliance plans required by § 62.1-44.19:14, (ii) develop a standard form of agreement for use by permittees when buying and selling nitrogen and phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the extent possible, sufficient credits are available each year to achieve full compliance with the general permit, (v) assist individual municipal permittees in utilizing public-private partnerships and other innovative measures to achieve the Commonwealth's water quality goals, and (vi) perform such other duties and functions as may be necessary to the effective and efficient implementation of the credit exchange program. The Association shall not assume any of the permittees' compliance obligations under the general permit.

A permittee may acquire nitrogen or phosphorus credits through payments made into the Virginia Water Quality Improvement Fund established in § 10.1-2128 only if, no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the general permit.

If no credits are reasonably available in an individual tributary, the general permit shall provide for the acquisition of nitrogen and phosphorus credits through payments into the Virginia Water Quality Improvement Fund. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the Virginia tributaries strategies plans. The general permit shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the general permit, the Board may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

Simply stated, this legislation allows sewage treatment facilities who are searching for credits to either pay money into the Water Quality Improvement Fund. This fund can pay for tree planting

and other Best Management Practices thereby enhancing current cost-share payments to private non-industrial landowners. More importantly, this nutrient credit exchange program can also be utilized to not only establish forests but to offer landowners an annual payment to keep forests on the landscape and minimize conversion.

Appendix 4

Document Number: 05-122
Tax Type: Individual Income Tax
Rulings of the Tax Commissioner
Brief Description: Land Preservation Tax Credit
Topics: Credits
Date Issued: 07/22/2005

Supersedes P.D 05-76

July 22, 2005

Re: Ruling Request: Individual Income Tax

You requested a ruling on the eligibility of a conservation easement for Land Preservation Tax Credits (the "Virginia credit") authorized under the Virginia Land Conservation Incentives Act of 1999 (the "Act"). You wish to know whether a determination by the Internal Revenue Service ("IRS") that, for federal income tax purposes, a donation of a particular land conservation easement does not qualify as a deductible charitable donation under Internal Revenue Code ("IRC") § 170(h), would necessarily render that donation ineligible for tax credits under the Act. The Department of Taxation (the "Department") initially responded to this inquiry on May 19, 2005, which was published as Public Document ("P.D.) P.D. 05-76 (May 19, 2005).

Following publication of P.D. 05-76, the Department received additional information concerning widespread variations in certain clauses and language that may, or in some cases should, be included in the documents conveying conservation easements to various donees.

After reviewing this information, the ruling published as P.D. 05-76 is hereby withdrawn and revoked, and this ruling is issued in its place.

FACTS

The Department has recently been informed that Land Preservation Tax Credits have been claimed on Virginia tax returns based upon several land conservation easements that may possibly be defective as to the form of the instrument. While these easement instruments may convey enforceable preservation rights to eligible conservation entities, they lack certain language that is arguably required to qualify for the federal charitable deduction under IRC § 170(h) and, thus, for the Virginia credit. At this time, the Department is unaware that the IRS has ruled that any Virginia conservation easements are defective for tax purposes because of the absence of certain language.

You are writing to request that the Department institute a policy that will allow the Virginia credit to be claimed and maintained in spite of the fact that the credits are based on easement instruments that are found to be defective under IRC § 170(h). You ask that this policy remain in place even if the IRS disqualifies those easements under IRC § 170(h).

RULING

The Act, codified at Va. Code § 58.1-510, et esq., provides a credit equal to fifty percent of the value of real property, or an interest in real property, donated to an eligible charitable organization or instrumentality of the Commonwealth for qualifying land conservation purposes. In order to qualify for the Virginia credit, a donation of a less than fee simple interest in real property must qualify as a charitable deduction under IRC § 170(h). See Va. Code §§ 58.1-511 and 58.1-512 B 2. This section of the IRC and the regulations issued pursuant to it contain several requirements that must be met in order for an easement to be eligible for a charitable deduction.

You have requested that the Department disregard any findings made by the IRS pertaining to whether the easements qualify as charitable deductions under IRC § 170(h). In other words, you are urging the Department to allow Virginia taxpayers to claim conservation easement tax credits, notwithstanding the fact that the instruments by which the easements were conveyed, failed to meet the requirements of IRC § 170(h) and its regulations.

Because the Act grants a credit or abatement of tax, it must be strictly construed. Forst v. Rockingham Poultry Mktg. Coop., 222 Va. 270, 279 S.E.2d 400 (1981)1. This means that an easement must qualify as a charitable deduction under IRC § 170(h). If the easement does not meet any of those requirements, it also does not meet the conditions established under the Act, and, therefore, the easement cannot qualify for the Virginia credit. The statute provides no authority for the Department to allow an exception.

Furthermore, the Department cannot ignore noncompliance. Thus, should the IRS review a land conservation easement and disallow the associated charitable deduction for failure to qualify under IRC § 170(h), the Department is required by Va. Code § 58.1-512 B 2 to make corresponding adjustments to Virginia taxable income and also disallow the Virginia Credit. If, upon such a review, the IRS determined to allow the charitable deduction, however, the Department will accept that decision and allow the Virginia credit if it otherwise qualifies under the Act. In any event, the Department is not required to wait for a decision from the IRS. Instead, the Department may act and, in its own right, disallow the Virginia Credit.

Regardless of whether shortcomings existed in any land trust organizations' template instruments suggested for use by a taxpayer contemplating a donation of an interest in land for a conservation purpose, that does not mean that any donations of conservation easements held by such organizations are necessarily ineligible for the Virginia Credit. Frequently, donors' legal advisers draft original instruments or modify templates to conform to the donors' wishes and other requirements of the law. I am certain that many practitioners pay particular attention to the requirements of IRC § 170(h) to ensure the donor is eligible for all tax benefits that may accrue. Thus, as noted above, each donation must be examined on a case-by-case basis to determine eligibility for the Virginia Credit. Moreover, I note that some of the requirements of IRC § 170(h) addressed indirectly in this letter do not apply in the circumstances where the donation of the conservation interest in land is in fee simple.

In the unusual circumstance that a recorded instrument does not qualify for the Virginia Credit because of missing or defective language, but still conveys an enforceable easement and the parties intended for the document to comply with the IRS requirements, existing law may allow the document to be reformed, and the conveyance would then qualify for the credit from the date of reformation. The value of the easement, however, would be governed

by the value on the date that the enforceable easement was originally conveyed, not the date that the documents were reformed to qualify for tax benefits. A different conclusion would be reached, of course, if the IRS acted to deny the charitable deduction regardless of the reformation, or issued a ruling that accepts the reformation yet establishes a different value. Nothing in this letter is intended to rule ultimately on either the real property or federal tax law issues discussed in this paragraph. Again, each donation would have to be examined on a case-by-case basis.

In conclusion, should a taxpayer have a Land Preservation Tax Credit that is based on an easement that lacks language that is arguably required under IRC § 170(h), he or she should consult with his or her tax advisor to determine eligibility for any intended tax benefits and to choose an appropriate course of action.

1 "The rule of strict construction stems from the announced policy of this Commonwealth to distribute the tax burden uniformly and upon all property. Va.Const. art. X, § 1. Thus, any provision granting an immunity from taxes, whether called an exclusion, limitation or exemption is narrowly construed." Forst v. Rockingham Poultry Coop., 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981).
2 See, e.g., United States of America v. Peter F. Blackman, Supreme Court of Virginia, Record No. 042404, June 9, 2005, at pp. 12, 14-15 [A valid conservation easement may be conveyed irrespective of whether the easement meets the tests of common law (or, impliedly, other statutes for different, though closely related purposes, or later-enacted statutes).]

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Rulings of the Tax Commissioner

Document Number: 05-125
Tax Type: Corporation Income Tax
Brief Description: Land Preservation Tax Credit
Topics: Credits
Date Issued: 07/26/2005

July 26, 2005

Re: Ruling Request: Land Preservation Tax Credit

This is in response to your letter of May 4, 2004, in which you

requested a ruling on the Land Preservation Tax Credit (the "Credit") for the ***** (the "Taxpayer").

FACTS

The Taxpayer is a § 501(c)(3) corporation under the Internal Revenue Code. According to its Certificate of Incorporation, the purposes of the Taxpayer are to maintain and operate museums, parks and places of historical interest in Virginia; to promote and further the spiritual, mental, moral and cultural welfare of the people of Virginia; and to make voluntary donations to corporations, trusts or foundations or other organizations which are organized and operated exclusively for charitable, scientific, literary, education or other benevolent purposes. The Taxpayer is not eligible to hold conservation easements.

The Taxpayer currently owns three tracts of land in Virginia. The Taxpayer would like to give an open-space easement on two of these properties to an organization eligible to hold a conservation easement. The Taxpayer would like to earn Land Preservation Tax Credits from this gift and then sell these credits.

You are writing first to inquire whether the Taxpayer meets the requirements to be considered a taxpayer under the Virginia Land Conservation Incentives Act of 1999 (the "Act"). You also ask if the proposed donation by the Taxpayer would qualify for Land Preservation Tax Credits and, if so, whether the Taxpayer may transfer or sell any credits that are earned.

RULING

In order to qualify for Land Preservation Tax Credits, a donation of land must be made by a "landowner/taxpayer." Va. Code § 58.1-512 A. Section 58.1-1 of the Code defines the term "taxpayer" as "every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of the Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth." In addition, the Attorney General has addressed the specific situation of eligibility under the Land Preservation Tax Credit. A November 2002 Opinion of the Attorney General states, "[a]ny person, corporation, partnership, organization, trust or estate falling into these categories could hold and transfer a tax credit. For example, a nonprofit corporation subject to sales tax, but not income tax, may transfer its credit to a taxpayer subject to income tax." Opinion of

the Attorney General 02-094 (11/19/02).

The example offered by the Opinion of the Attorney General would seem to cover this situation. The Taxpayer is a nonprofit organization and is exempt from income taxes. The Taxpayer states, however, that it is subject to the retail sales and use tax and all state employer taxes. Thus, the Taxpayer would be considered a taxpayer for the purposes of the Act.

While the Taxpayer is an eligible taxpayer, it still must make a qualified donation in order to be eligible for Land Preservation Tax Credits. Under the Code, qualified donations include "the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code . . . ." Va. Code 58.1-512 B 2. This section of the IRC requires among other things, that each contribution of a qualified real property interest be made exclusively for conservation purposes to a qualified organization. One such conservation purpose is for "the preservation of open space . . . ." IRC § 170(h)(4)(A)(iii).

The Taxpayer intends to donate an open-space easement for approximately one thousand fifty-two acres of land in two separate parcels to an organization eligible to hold a conservation easement. So long as this conveyance is in perpetuity and all of the other criteria of the Act and of IRC § 170(h) and its regulations are met, it appears that this donation would qualify for Land Preservation Tax Credits.

Please note that this outcome would be different if the Taxpayer itself was eligible to hold the conservation easement. This is because the purpose of the Act would be accomplished once ownership of the land is held by a conservation agency that is able ensure that the land is preserved. Any subsequent transfer of the land, or any interest in the land, to a similarly qualified organization would be redundant and would merely be done to gain tax credits. Because transferring land or an interest in land to obtain credits does not qualify as an approved purpose under the Act, Land Preservation Tax Credits would not be granted in that situation.

Finally, Va. Code § 58.1-513 C provides that, "[a]ny taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia

income tax returns." Because the Taxpayer would obtain credits from its donation of land, it would hold credits that it could then transfer or sell. The only restriction on this is that the credits must be transferred or sold to another taxpayer who may actually use the credits on a Virginia income tax return. Thus, transferring or selling the credit to another nonprofit agency is not allowed.

Appendix 5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SENATE BILL 681*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/05
Third Edition Engrossed 5/17/05
House Committee Substitute Favorable 8/9/05

Short Title: Clarify Regulation of Forestry. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the county regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter."

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-458.5. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing

development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter."

SECTION 3. This act is effective when it becomes law.

Appendix 6

§ 10.1-1126.1. Silvicultural practices; local government authority limited.

A. Forestry, when practiced in accordance with accepted silvicultural best management practices as determined by the State Forester pursuant to § 10.1-1105, constitutes a beneficial and desirable use of the Commonwealth's forest resources.

B. Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

C. The provisions of this section shall apply to the harvesting of timber, provided that the area on which such harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163.

The provisions of this section shall not apply to land that has been rezoned or converted at the request of the owner or previous owner from an agricultural or rural to a residential, commercial or industrial zone or use.

Nothing in this section shall affect any requirement imposed pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or imposed by a locality pursuant to the designation of a scenic highway or Virginia byway in accordance with Article 5 (§ 33.1-62 et seq.) of Chapter 1 of Title 33.1.

(1997, c. 7.)

Appendix 7

Board of Forestry
And
Virginia Department of Forestry
Senate Joint Resolution 367
May 2005

Survey Questions

Purpose: These questions will address the current issues in land conservation for the forestry community and stakeholders including county government.

1. With regard to existing conservation programs, is Virginia's county government structure adequate to conserve forest land?

2. Is the state government structure adequate to ensure open space is recognized as important and conserved?

3. What new ideas can be utilized to conserve forest land in the Commonwealth?

4. Which landowner incentives are the most successful in conserving the land base? Non-market? Market?

5. What tax scenarios offer the best method(s) to conserve forest land? Credits? Reduced real estate tax?

6. Would a state reimbursement to the locality for conservation real estate tax loss ease the locality burden enough to warrant consideration?

7. Would a "conservation agreement" less than in perpetuity work for some landowners if some type of landowner benefits were offered?

Local Ordinance Issue

Dr. Mortimer's county survey work will be utilized and coupled with interviews with county planners from selected localities. Case studies will be developed to show the economic impact from local ordinances. One or more counties from each DOF Region will be interviewed. A request letter to Regional Foresters will go out to gain insight on which counties to select for interviewing.